

PEARL KELLY

IBLA 80-656

Decided December 2, 1980

Appeal from a decision of the California State Office, Bureau of Land Management, declaring abandoned and void seven lode mining claims CA MC 67657 through 67663.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment -- Mining Claims: Assessment Work

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file on or before Oct. 22, 1979, an affidavit of annual assessment work or notice of intention to hold, the claim must be deemed abandoned and void.

APPEARANCES: Pearl Kelly, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Pearl Kelly has appealed from a decision of the California State Office, Bureau of Land Management (BLM), rendered May 7, 1980, rejecting recordation filings for mining claims CA MC 67657 through

67663. ^{1/} The filings were rejected for failure to file timely notices of location as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a).

The claims were located between July 1, 1937, and December 12, 1945. The location notices were filed with BLM on April 28, 1980. There is no indication in the record before the Board that appellant at any time attempted to file the affidavits of annual assessment work or notices of intention to hold which were required to be filed on or before October 22, 1979, under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1.

Appellant filed a timely appeal offering the following reasons: Mines have been in existence since 1924; they have always been lived on; values per ton range from \$ 9 to \$ 16.29; and assessment work has been done each year and taxes paid in full. Appellant also states that "papers" were sent to the old address of BLM's Riverside Office in September 1979. Appellant states the papers were lost by the Postal Service, presumably referring to the attached location notices.

[1] It is not necessary to discuss appellant's statements as to the Postal Service, because the claims must be declared abandoned for failure to file copies of evidence of annual assessment work or notices of intention to hold the claims. Departmental regulation 43 CFR 3833.2-1(a) provides:

§ 3833.2-1 When filing required.

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

^{1/}	<u>Name of Claim</u>	<u>Location Date</u>	<u>Claim No.</u>
	Reath Fraction No. 2 Lode	December 12, 1945	67657
	Hazel Fraction Lode	December 5, 1945	67658
	Los Padre No. 1 Lode	July 1, 1938	67659
	Los Padre No. 2 Lode	July 1, 1938	67660

The statute and regulation require that evidence of annual assessment work or a notice of intention to hold be filed on or before October 22, 1979. The effect of failure to file is set forth in 43 CFR 3833.4(a):

(a) The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein shall be deemed conclusively to constitute an abandonment of the mining claim, mill, or tunnel site, and it shall be void.

he requirements of the statute and regulations are specific. The Board has no authority to change provisions of the law promulgated by Congress. Kenneth K. Parker, 48 IBLA 129 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

